

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA

Plaintiff

vs

ALBA DOMINGA GOMEZ- DE MORALES

Defendant

CRIMINAL 07-0148CCC

ORDER

Before the Court is the appeal taken by the United States of the U.S. Magistrate-Judge's Order granting bail and setting conditions of release for defendant Alba Dominga Gómez-de Morales (docket entry 13), defendant's opposition (docket entry 18) and the government's reply (docket entry 19). The record contains only the text of the minute entry of the bail hearing held on April 19, 2007 (docket entry 12) which refers to the government's argument that defendant constituted a risk of flight because of her alien status and a general reference to defense counsel arguing in favor of setting conditions of release. The U.S. Magistrate-Judge set bail at \$25,000.00 (\$10,000.00 secured/\$15,000.00 unsecured), with home detention, electronic monitoring and standard conditions of release. The minutes do not include any findings by the U.S. Magistrate-Judge in support of his decision.

While defendant has requested a de novo bail hearing, the same is not necessary as there is enough information on the record for the Court to rule on the matter and it does not appear that additional grounds in support of detention or release, beyond those already presented to the Magistrate-Judge, have been raised by either party. An independent de novo review by the Court under 18 U.S.C. § 3145(a) does not require a de novo hearing. See United States v. Gaviria, 828 F.2d 667, 670 (11th Cir. 1987) ("'[D]e novo' review [only] requires the court to exercise independent consideration of all facts properly before it...")

Defendant claims that she is a mother and grandmother and poses no risk of flight or danger to the community. There is no information provided by her regarding her family ties (beyond stating she is a mother/grandmother), community ties, employment history, or other

information regarding her personal circumstances. In contrast to the lack of information provided by defendant, the government has presented evidence in support of its contention that she constitutes a risk of flight. Attached to its appeal are the following documents: (1) the administrative removal order of the former Immigration and Naturalization Service dated November 10, 1999 finding her deportable and ordering her removal from the United States to the Dominican Republic and further finding that she had been convicted of an aggravated felony, (2) the Warning to Alien Ordered Removed addressed to defendant Gómez-de Morales dated November 19, 1999 stating that she was prohibited from entering the United States at any time since she had been found deportable and ordered removed from the United States after being convicted for a crime designated as an aggravated felony, (3) copy of the Judgment of conviction for violation of Article 168 of the Penal Code of Puerto Rico which resulted in the imposition on April 6, 1995 of a twenty-four month sentence that was suspended on two counts charging her with the receipt and transportation of stolen goods. The statutory penalty for the offense of conviction in this case, a violation of 8 U.S.C. § 1326(a)(and (b)(2), is a maximum term of imprisonment of 20 years. The allegations of the one-count Indictment are that defendant, an alien who had previously been deported following her conviction for an aggravated felony, was found on March 27, 2007 in the United States (San Juan, Puerto Rico), without having reapplied for admission or obtained permission to reenter from the relevant authorities.

Having considered the evidence listed in the designation of evidence, (docket entry 15), defendant's alien status, previous deportation and past criminal history, the Court FINDS that defendant constitutes a risk of flight and that there are no conditions of release that would reasonably assure her appearance at trial. Accordingly, the U.S. Magistrate-Judge's Order issued on April 19, 2007 setting bond and conditions of release is REVERSED and defendant Alba Dominga Gómez-de Morales is ordered detained without bail pending trial.

SO ORDERED.

At San Juan, Puerto Rico, on June 4, 2007.

S/CARMEN CONSUELO CEREZO
United States District Judge